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No. 829

Supreme Court, U.S.
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JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

October Term, 1958

ARBIE R. MILES and ED BROWN, individually and as deacons, trustees and members of Ebenezer Baptist Church, Inc. and EBENEZER BAPTIST CHURCH, INC.,

Plaintiffs-Respondents,

—against—

ANDERSON W. WILSON, individually and as Pastor of Ebenezer Baptist Church, Inc.,

Defendant-Appellant.

BRIEF FOR ARBIE R. MILES and ED BROWN, etc. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

	PAGE
Opinions Below	1
Jurisdiction	2
Questions Presented	4
The Pleadings	5
Statement	9
Point I—The Court should not entertain jurisdiction by reason of defects in the petition	12
Point II—The finding of fact that the 14 persons who attempted to vote at the church election were non-members ("Ringers") and were brought to the election in furtherance of a conspiracy to "stuff the ballot box" is not an excommunication and does not create a constitutional question	13
(a) The attempt to stuff the ballot box	15
(b) The by-laws of the Church	18
(c) The persons whose votes were successfully challenged by plaintiffs	19
(d) Distinctions to be noted	21
(e) The cases cited by appellant have no application to the within fact	22
(f) Defendant having proceeded to enforce the terms of the judgment cannot contend same is void and appeal therefrom	25
Summary of Argument	26

PAGE

CONCLUSION 27

APPENDIX "A" — Decision and Findings of Hon. Meier Steinbrink, Official Referee 28

APPENDIX "B" — Stipulation 39

APPENDIX "C" 48

APPENDIX "D" — Order to Show Cause 50

APPENDIX "E" — Summons with Notice 54
Verified Complaint 55

AUTHORITIES CITED

Cases

Benneft v. Van Sickle, 18 N. Y. 481 25

City of Yonkers v. M. E. D. Corporation, Matter of, 262 N. Y. 548 23

Erie R. Co. v. International R. Co., 209 App. Div. 380, affd. 239 N. Y. 598 22

Gleanswer Compressed Air Supply Company, Incorporated v. Thompson-Starrett Company, 245 N. Y. 509 23

Goodrich v. Ross, Ketchum Co., 274 App. Div. 157 .. 22

Haydron v. Carroll, 225 N. Y. 84 25

Knapp v. Brown, 45 N. Y. 207 25

Korde Corp. v. Casino Classics, Inc., 280 App. Div. 740 22

Latourelle v. New York Central Railroad Company, 275 App. Div. 123, 89 N. Y. S. 2d 296 25

Mallory, Matter of, 278 N. Y. 429 13

McGuire v. St. Patrick's Cathedral, 54 Hun 207 23

PAGE

Metropolitan Trust Co. v. Longacre Electric Light & Power Co., 223 N. Y. 69 25
Morse, Jr. v. Morse Dry Dock & Repair Company, 249 App. Div. 764, 291 N. Y. S. 995 13
Murphy v. Spaulding, 46 N. Y. 556 25

Nod-Away Company, Inc. v. Carroll, 240 N. Y. 252.. 23

O'Connor-Sullivan, Inc. v. Otto, 283 App. Div. 269, 127 N. Y. S. 2d 373 25

Pennsylvania Railroad Co. v. Illinois Birch Co., 297 U. S. 447 3
Pines v. Beck, 300 N. Y. 181 14

Quicker-Berner v. Macy, 250 N. Y. 341 15

Rector v. Melish, 301 N. Y. 679, cert. denied 340 U. S. 936 ..... 17, 18, 23

Walker Memorial Baptist Church v. Samuels, 285 N. Y. 462 21
Waller v. Howell, 20 Misc. 236 23

Rule

Revised Rule of the Supreme Court of the United States adopted April 12, 1954 and effective July 1, 1954, page 22 12

Statute

Section 237, 238, 239, 240 U.S.J.C. 2

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Opinions Below

Opinion of Special Referee is not reported. Annexed hereto as Appendix "A", is a copy of the opinion of the Hon. MEIER STEINBRINK, Special Referee, which appears in the record below at pages 30 to 41. The opinion of the Appellate Division, Second Department is reported at 6 App. Div. 2d 898. The memorandum of affirmance by Court of Appeals is reported at 5 N. Y. 2d 822 and the memorandum opinion on the motion to amend the remittitur is reported at 5 N. Y. 2d 929.

(All figures in parentheses refer to folio numbers in record that was before Court of Appeals).

Jurisdiction

Petitioner contends that the jurisdiction involved herein is pursuant to Section 237 through 240 U. S. J. C.

It is respectfully submitted, however, that these sections do not cover a situation such as the instant case where a stipulation was entered into in open court and in the presence and with the consent of the defendant-appellant and his counsel, wherein it was agreed to submit the question of the defendant-appellant's retention in office to a vote of the congregation and in the same stipulation agreed to submit all and any points at issue, including passing upon the eligibility of the challenged voters to the very same Special Referee.

The learned Special Referee found as a matter of fact that these challenged voters were not members of the Church in accordance with the rules, by-laws, regulations and requirements of this church as to membership.

Jurisdiction, however, is not settled upon this learned Court since constitutional questions alleged to have been raised were not raised in the trial court, but were raised for the first time on appeal in the Appellate Division of the Supreme Court of the State of New York as a point in the Memorandum of Law.

This alleged constitutional question was not raised in the trial court and could not have been raised in the trial court by reason of the stipulation which was entered into in settlement of the entire proceeding. Annexed hereto as Appendix "B" is a copy of the stipulation which appears at folio 58.

The Court of Appeals of the State of New York followed these cases when it held herein (5 N. Y. 2d 929):

> "• • • Upon the appeal herein there was presented an alleged constitutional question under the Constitution of the United States, viz: Appellant contended that the interference by the civil courts with the internal affiars of a religious body was a violation of the First Amendment. *The Court of Appeals held that there was no such violation and that this question was insubstantial in view of the fact that appellant by stipulation had submitted to a membership vote the question of his retention in office as pastor.*" (Emphasis supplied)

Thus the Court of Appeals has held that petitioner has waived his right in the lower court to test the constitutional question and this court has ruled in previous decisions that it will respect such a finding.

In the case of *Pennsylvania Railroad Co.* v. *Illinois Birch Co.*, 297 U. S. 447. The opinion of Mr. Justice Butler contained the following at page 463:

> "• • • As the highest court of the State declined to consider them because not raised in the Circuit Court or presented to it in accordance with practice that was unquestionably well established and reasonable, this court is without jurisdiction to consider either of them. *Chicago, I. & L. R. Co.* v. *McGuire*, 196 U. S. 128, 131; *Hulbert* v. *Chicago*, 202 U. S. 275; *Cox* v. *Texas*, 202 U. S. 446, 452; *Louisville & Nashville R. Co.* v. *Woodford*, 234 U. S. 46, 51."

Questions Presented

1. Where a party and his attorney enter into a stipulation during trial, which stipulation by its terms dispose of the litigation, such party may not thereafter contend that the stipulation was illegal because it waived alleged and imaginative constitutional rights.

2. Where further proceedings to the litigation were required to be held in accordance with the terms of the stipulation entered into, and which further proceedings were held pursuant to the said stipulation and in accordance with the understanding of the parties to the stipulation and their counsel, petitioner-defendant-appellant may not now claim a lack of jurisdiction in the Special Referee because it waives alleged and imaginative constitutional rights.

3. A finding by the Special Referee that challenged members were not members of the congregation in accordance with the rules, by-laws, regulations and requirements of the church as to membership is not an excommunication of these non-members of the church where the Special Referee found, as a matter of fact, that by-laws did exist and that the by-laws were in books and records of the church in the possession of the petitioner-defendant-appellant and withheld by him, even though counsel for plaintiffs-respondents stated that there were no by-laws because the by-laws were in the possession of and unlawfully withheld by petitioner-defendant-appellant.

4. Having recognized the final judgment of the court below by the commencement of an action and proceeding to enforce alleged and claimed rights under said judgment,

the petitioner-defendant-appellant cannot use as one of the bases for his appeal that alleged and imaginative constitutional rights have been violated by the judgment from which he is appealing.

The Pleadings

The proceedings were commenced to enjoin the defendant from claiming to be Pastor of the Ebenezer Baptist Church at 1110 Herkimer Street, Brooklyn, New York, and other incidental relief, upon the ground that he had been discharged by majority vote at a special meeting called for that purpose (13-23).

The main part of the complaint is the allegation that on September 10, 1957, a special meeting of the members of the Ebenezer Baptist Church, Inc. was held on notice to the defendant who was present on the occasion and upon a majority vote of the membership the defendant Wilson was discharged as Pastor. The action of the membership is alleged to have been taken "pursuant to the custom and usage of Ebenezer Baptist Church, Inc." (15-17).

The complaint further alleged that the petitioner-defendant-appellant refused to relinquish his post or to turn over to the deacons of the church all the books, records and documents of his office as pastor which created confusion amongst the members with the result that the church suffered financially in revenue and spiritually in dwindling attendance (19) for all of which the plaintiffs had no adequate remedy at law (20).

The answer of the petitioner-defendant-appellant contained four separate defenses. The first defense alleged that there was a defect of necessary parties to the action

because of the fact that Ebenezer Baptist Church (the unincorporated body) was neither plaintiff nor defendant to the suit and that no demand had been made upon the Board of such unincorporated body to bring this action, and further, that it did not appear that any authority was given to the plaintiffs to institute the instant action (27).

The second defense alleged that the court had no jurisdiction over the subject matter because the same was purely an ecclesiastical matter (28).

The third defense claimed that plaintiffs had an adequate remedy at law.

The fourth and final defense alleged that the defendant had received lifetime tenure by a resolution adopted by the Ebenezer Baptist Church, Inc. on December 16, 1946 (29-30).

The defendant denied the allegations of the complaint, admitted the facts about the meeting, but alleged that the resolution to remove him did not come to a vote and a substitute motion was made to table the motion that would have declared the pulpit vacant.

The matter was referred to the Hon. Meier Steinbrink, Special Referee to hear and determine, upon the written stipulations of the parties and the order of Mr. Justice James S. Brown (125, 126). The trial had actually started on October 14, 1957 (151-171) *when a stipulation of settlement was entered into* (172).

That stipulation in part presently pertinent provided as follows (174); annexed hereto as Exhibit 2:

> *"Without conceding that the method and form used by the plaintiffs herein heretofore is improper*

and without recognizing the contention of the defendant that their form was improper and should have been used in another form, the parties agree that the following modus operandi shall be used to settle the dispute herein."

The stipulation also provided that new charges for the removal of the defendant, "the pastor of the church," would be made (175) and outlined what was to be done with such charges if the board of deacons entertained them (194-5). How such charges were to be handled, insofar as the membership was concerned, was stated as follows in the stipulation (186-190):

"(10) In the event that the meeting of the Church Society is called, that is, the meeting of the entire church body, and by majority vote the charges are not sustained, then in that event the matter shall be terminated and no further action shall be taken by any party and the pastor shall remain as heretofore.

"(11) In the event, however, that the membership sustains the charges and votes to terminate the relationship as pastor of the church, then and in that event the pastor stipulates and agrees that he will forthwith terminate the pastorate or at such other time, if any, fixed in the resolution.

* * * * *

"(13) It is further stipulated and agreed that the Court retains jurisdiction of this action and that in the event that it is necessary to interpret or enforce this stipulation or take any further action with reference to the case, then either party may apply to the Court upon three days notice to the other for such relief as to the Court may appear just and proper. (Emphasis supplied)

"(14) In the event a special stated meeting of the Church Society or congregation as a sequence of the steps hereinabove set forth is required, the representatives of the Honest Ballot Association shall be called in to supervise the vote taken at such meeting and the expense thereof shall be borne equally between the parties hereto. The certificate by the Honest Ballot Association as to the vote shall be binding upon the parties hereto.

"(15) The only persons entitled to vote at a meeting of the Board of Deacons or at a stated meeting of the Church Society or congregation shall be those members who were such on September 10, 1957. (Emphasis supplied)

"(16) Without conceding the allegation of the defendant herein that the defendant had heretofore received a life call from the congregation, before a vote may be taken upon the question of the termination or retention of the pastor as set forth hereinbefore, it shall be necessary that the resolution which the defendant alleges and claims was heretofore passed giving him life tenure shall be rescinded by a majority vote of the congregation." (Italics ours)

The stipulation contained other provisions which are of no consequence at present.

The vote was taken and the Honest Ballot Association reported that there were 75 unchallenged ballots and 23 challenged ballots (99).

The disposition of the case, therefore, fell to the Special Referee under the reservation of jurisdiction pursuant to paragraph 13 of the stipulation of settlement (188).

The defendants had challenged one vote on plaintiffs' side and during trial withdrew the challenge. The matter

then came on before the Special Referee who had testimony as to all challenged voters and sustained the challenge of 14 voters (102). The Special Referee referred to some of the persons who voted: "* * * As an attempt to stuff the ballot box" (106).

Statement

It is noted that in the within petition and in the papers submitted in the state courts, petitioner completely ignored the fact that he personally entered into a stipulation and he personally was to be bound by the stipulation and all proceedings thereunder and that all the judgment rendered herein did, was to hold him personally to this stipulation. The petitioner-defendant-appellant shows a complete disregard for the stipulation and a facetious attitude that the stipulation does not exist. When petitioner finally realizes he cannot completely disregard the stipulation, he then attempts to create an impression that the stipulation was used only to attempt to bind the church and not him, and that he is merely a spectator and bystander. Obviously the opposite is true. The stipulation was personally against him, was entered into with his consent, in his presence and with his attorneys' consent, knowledge and acquiescence in open court (see Judge Steinbrink's decision, *infra*) and he should at all times respect it and be bound by it.

All proceedings previously had herein clearly show that after the stipulation was entered into, all parties adhered thereto in that: (1) the appellant asked for forgiveness from his flock; (2) unable to obtain same; (3) charges being continued; (4) an election was held, supervised by the Honest Ballot Association pursuant to the stipulation. The

election clearly disclosed why appellant so readily entered into the stipulation of settlement. There is no doubt that he had a pre-devised scheme in his mind to stuff the ballot box and thereby felt he could never be defeated at an election.

However, pursuant to the terms of the stipulation the "ringers" were brought to a hearing before the learned Special Referee, Hon. Meier Steinbrink. The record clearly indicates that this was the very plan advocated by the appellant and his attorneys, because his attorneys took the stand and so testified.

From the testimony of Nathan Amcham (attorney for petitioners):

> "Q. • • • What was there to prevent them from importing them from other churches, and bringing them in to vote? A. Mr. Abrahams of the Honest Ballot Association, who conducted the election, stated, and we both agreed, that anybody who asked for a ballot. . . .
>
> Q. Would be given one? A. Yes, and when it is challeneged, *it would be put in a separate envelope, and left for your Honor to determine*" (1727). (Emphasis supplied)

This, of course, ended any objection whatever to the proceedings.

The cases cited in this brief clearly show that jurisdiction may be conferred upon the Court by stipulation and further that the parties are bound, not only by the stipulations, but by the theory upon which the action is tried.

On appeal to the State Courts the defendant raised three points only one of which is pertinent at this time, to wit: that the judgment entered was unconstitutional and void. This was the first time that the defendent-petitioner-appellant ever raised the issue of constitutionality. It was never raised in either the pleadings or in issue during the course of the trial. The first time this was raised was on appeal in the Appellate Division. In connection therewith, there was a specific finding by the Special Referee that under the proof adduced there was no ecclesiastical judicatory which could pass upon questions at issue in the instant case (1992) and that while the matters of hiring clergymen for a church is one that is ecclesiastical in nature, civil courts retained jurisdiction to determine a dispute as to a given election where question of control and management of temporalities will be settled by the determination of such disputed ecclesiastical matter and especially where the evidence adduced showed that the peitioner-defendant-appellant was an officer of a corporation and had authority to sign checks jointly with the secretary of the corporation (Plaintiff's Exhibit "3" printed opposite page 678).

Petitioner-defendant-appellant cannot now be heard to press the argument as to the separation of ecclesiastical and civil judicial courts in view of the fact that he agreed by the stipulation mentioned to abide by the vote of the members to stay in his position or go therefrom when the charges were made and voted upon, nor can present counsel be heard in derogation of Mr. Amcham who tried the case on behalf of the petitioner-defendant-appellant, in view of the fact that Mr. Amcham is an able, capable and well-seasoned trial attorney who knew exactly what he was doing at all times, as is very ably demonstrated in a review of the trial record.

POINT I

The Court should not entertain jurisdiction by reason of defects in the petition.

In the revised rules of the Supreme Court of the United States adopted April 12, 1954 and effective July 1, 1954 at page 22 on a petition for a writ of certiorrari the Rules require that the petitioner seeking to review a judgment of the said Court shall specify in his statement of the case the stage in the proceedings in the Court of the first instance and in the Appellate Court at which and the manner in which federal questions sought to be reviewed were raised, as well as the manner in which they were handled in the pertinent court.

This the petitioner has failed to do and a review of the pleadings and all of the proceedings will show that the issue of an alleged federal question was not timely and not properly raised.

The four affirmative defenses raised in the answer submitted to the original complaint were waived by the stipulation of settlement entered into before the learned Special Referee so that at no time was a federal question ever raised in the trial court.

The raising of the federal question as a point in the appellant's brief in the Appellate Division of the Supreme Court of the State of New York for the Second Judicial Department was held to be an insubstantial one by the Court of Appeals.

Thus, the Supreme Court of the United States cannot accept jurisdiction to review the judgment on this writ of

certiorari where the petitioner has failed to so specify the raising of a constitutional question in the Court of first instance and in accordance with the requirements of the Rules of this Court.

POINT II

The finding of fact that the 14 persons who attempted to vote at the church election were non-members ("Ringers") and were brought to the election in furtherance of a conspiracy to "stuff the ballot box"[1] is not an excommunication and does not create a constitutional question.

The law is clear that a party is bound by his stipulation even if he waives a constitutional right in it.

In *Matter of Mallory*, 278 N. Y. 429, the *per curiam* opinion contains the following at page 433:

> "The parties being of full age, could enter into a stipulation or bind themselves by acquiescence • • •. Parties by their stipulations may in many ways make the law for any legal proceeding to which they are parties, which not only bind them, but which the courts are bound to enforce. They may stipulate away statutory and even constitutional rights (Matter of N. Y. L. & W. R.R. Co., 98 N. Y. 447, 453). • • • "

In the case of *Morse, Jr.* v. *Morse Dry Dock & Repair Company*, 249 App. Div. 764, 291 N. Y. S. 995, the *per curiam* opinion of the court contained the following:

> "• • • The stipulation was in due form (Rules of Civil Practice, Rule 4). Courts look with favor

upon such a stipulation, which becomes the law of the case (*Cohn* v. *Cohn*, 120 Misc. 731; *Lee* v. *Ridd*, 120 Misc. 407 and cases therein cited). It is competent for parties to waive their statutory or even constitutional rights by stipulation and to agree upon the procedure they will follow (*Twin Realty Corp.* v. *Clens Falls Portland Cement Co.*, 225 App. Div. 515; *Matter of Cushman*, 177 App. Div. 127; *DiDonato* v. *Rosenberg*, 230 App. Div. 538). If the agreement be not unreasonable or against good morals or sound public policy, a party may thus stipulate away his rights, both statutory and constitutional, and make the law applicable to the action and such agreement will be enforced (citing cases) * * *."

In the case of *Pines* v. *Beck*, 300 N. Y. 181 the opinion of Bromley, *J.* contained the following on page 187:

"And in *Matter of New York L. & W. R.R. Co.* (*supra*) in holding that the parties had effectively restricted the power of the Supreme Court to appoint Commissioners for appraisal, the court said (98 N. Y., at pp. 452-453): 'the agreement of the parties bound them and concluded the court in that proceeding, and the court was bound as between the parties to observe, enforce and carry out the agreement. Parties by their stipulations may in many ways make the law for any legal proceedings to which they are parties, which not only binds them, but which the courts are bound to enforce.'"

Pursuant to the stipulation an election under the watchful eye of the Honest Ballot Association was held. Because it was found necessary to challenge numerous ballots pursuant to section 13 of the Stipulation (188) and the matter was referred back to the Special Referee only

to determine whether the challenges were proper or not. Without objection from either party this issue was tried before the Special Referee for some 7 days. In fact counsel for appellant while on the stand testified that this was the very procedure he had agreed upon in advance. See quoted portion of Mr. Amcham's testimony, *supra*.

This certainly was a concrete example of the attitude of appellant's counsel at the hearing and it certainly *forbids a contrary agreement in any appellate court.*

By acquiescence in the stipulation, it is without question that the petitioner-defendant-appellant submitted himself to the fortunes of war as they might eventuate in the action as it was brought by the plaintiffs-respondents as deacons, trustees and members of a religious corporation and with the religious corporation itself as a party plaintiff.

Moreover, the stipulation very plainly and specifically stated that while the petitioner-defendant-appellant was not conceding that the method and form used by the plaintiffs in the action was proper, nevertheless "the parties agree that the following modus operandi should be used to settle the dispute herein". It is thereby felt that the defendant waived whatever defect there existed, if any, in the plaintiffs' action and provided the procedure as set forth in the stipulation for the means of deciding whatever defenses existed between the parties with respect to the defendant's tenure as pastor and what everybody was conceding to be the church involved whether it be in a corporate form or in an unincorporated form.

In a complete review of t[illegible]ent submitted that the judgment appealed from was [illegible] for the reasons specified by him, we find defendant chasing his tail around in a

circle, raising the defense while at the same time arguing the merits of the stipulation.

In the case of *Quicker-Berner* v. *Macy*, 250 N. Y. 341 the opinion of Lehman, *J.* contained the following at page 347:

> "In this case the plaintiff is not in a position to raise such question. A judgment must rest upon proof in regard to all matters which are in dispute between the parties, but the parties may themselves determine what matters are the subject of disputes and upon which proof may be required. The court having jurisdiction of the persons and of the subject matter of the dispute passes on nothing else. Not only the express language of a stipulation or concession but the construction which the parties place upon it and their attitude at the trial must be given effect in determining the force of a stipulation or concession. Here the defendant's attorney repeatedly stated to the court that the plaintiff had conceded and had stipulated that there was a joint election, and the plaintiffs' attorney conclusively evidenced his acquiescence in those statements, not only by silence but by arguing only the legal effect of a joint election. To allow a judgment in plaintiff's favor to stand not because the plaintiff has in fact failed to join in the employer's election or even because there is a real dispute on this point, but because the defendant rested upon a stipulation which both parties regarded as sufficient to show a joint election, would be entirely subversive of justice. . . . ."

(a) The attempt to stuff the ballot box:

Reverend Wilson was well informed in advance of his conduct (76-82) that he had alienated his flock but he readily consented to submit the question to vote because he

probably had sinister schemes in mind that would assure him the election. First he destroyed the by-laws that were last seen in his possession (119). He tampered with the other church records and up until now has never produced the books and records of the church. The call went out to other ministers that they should come and vote because he was in trouble (1369-1370). (None of them were concerned over the fact that they were not members of Ebenezer so not entitled to vote). Former members who had long since moved far away (555, 556) or had joined other churches (1262-1271) were brought in to vote. Persons who according to the by-laws were no longer members also came forward for appellant and last we have many children who not only did not know what was involved and were not even members of the church at the stipulated date (189) were brought to the church to vote for Reverend Wilson. The colloquial expression for these persons are "ringers". Petitioner in this petition had the temerity to claim that Judge Steinbrink "excommunicated" these persons and "stripped them of their rights to vote". The opposite is exactly true. These persons were not members and did not have a right to vote consequently the decision of the court pursuant to stipulation and agreement (1727) is binding and unassailable.

The court well knows the high esteem and regard in which the learned Special Referee Hon. Meier Steinbrink has been held in all of his decisions he has handed down. Special notice should be taken of his decision in the *Melish* case, in which he specifically held that no ecclesiastical questions were to be passed upon.

No Judge or justice of the Supreme Court of the State of New York has ever sat and decided more church cases

than has the learned Special Referee, Hon. Meier Steinbrink. At no time has this court ever found that Judge Steinbrink, as a judge sitting in a civil court case, passed on ecclesiastical questions. Certainly Judge Steinbrink did not pass upon any ecclesiastical questions herein.

A parallel situation such as is claimed here existed in the *Melish* case, *Rector* v. *Melish*, 301 N. Y. 679, cert. denied 340 U. S. 926, where the Supreme Court of the United States refused certiorari and held that no ecclesiastical questions were passed upon. In the *Melish* case no stipulation existed as exists in the instant case. He merely applied the ecclesiastical law to the qualifications on members as provided for in the by-laws, rules and regulations of this little church, whose pastor he termed treated it as his "vest pocket possession."

(b) The by-laws of the Church:

The book that contained the by-laws was never produced, but, the indication that it existed came not only from plaintiffs' witnesses, but also from the witnesses whose testimony was vouched for by appellant, and the court was justified in finding for respondents (119) in that respect. Mr. Miles saw the book and actually read out of it (1821, 1922) and he heard appellant speak from the pulpit concerning the by-laws and state that they contained words to the effect that if a person fails to attend three communions for three months or fails to pay dues for six months he is automatically dismissed (1824, 1825). *Thomas Harrison* heard the same statements and saw the by-law book (1769-1772). *Della Burgest* also heard Reverend Wilson make the same statement (1595-1599). The appellant claimed that according to Hiscox one could never lose his membership in the

church but this was blasted by the actual fact that after being absent both *Thomas Harrison* (1761, 1764) and *Della Burgest* (1583-1588) were forced to seek reinstatement by explanation and vote of the church. *Claudette Smith* also heard these statements by Reverend Wilson (1063, 1065, 1097), *Julius B. Bostic, who was the son-in-law of Reverend Wilson* and a witness for him also was told that after he had been away for six months he could not be reinstated to his membership (922) until he was approved by the church. He was positive his father-in-law told him that this was required by church procedure and actually he was reinstated by such method (909-915). *Ed Brown* also saw the by-law book (1937).

We also note that another of appellant's witnesses *William H. Powell* claimed to have been reinstated the same way. In face of this preponderance of evidence the weak denial of Reverend Wilson that these witnesses were confused (1924), that he never made such statements (1928, 1929) and the church had no by-laws (1128-1130) was rightfully disbelieved by the Special Referee.

(c) The persons whose votes were successfully challenged by plaintiffs:

The learned Special Referee was absolutely correct in refusing to give any credence or honor the votes of the children and that there were in fact by-laws in this church. The arguments submitted in criticism of the Special Referee's findings are captious because the bill of particulars submitted in the trial court and the pleadings clearly indicated that whatever by-laws there were, they were always in the possession of the petitioner-defendant-appellant, who, to this very day, has failed and refused to turn same over. He

further overlooks the fact that several of the petitioner-defendant-appellant's own witnesses testified to the fact that there were by-laws and that the petitioner-defendant-appellant had stated that such by-laws were in existence.

The brief of the petitioner-defendant-appellant does not disclose that the record before the learned Special Referee indicated that in 1948 the church is alleged to have signed a contract to convey the parsonage at premises 1108 Herkimer Street, Brooklyn, New York, to the defendant in consideration of the sum of $2,000 in arrears of salaries it is alleged it could not pay him at that time. The contract is signed between the defendant as one of the trustees and as an officer of the corporation with himself as purchaser.

He further admits that in his dealings in 1948 to obtain possession of this church property or parsonage for himself, that this was not a wholly legal transaction inasmuch as the membership of the religious corporation had failed to approve the transaction and the Supreme Court of the State of New York had failed to give its consent to the transfer of the said property to the petitioner-defendant-appellant in accordance with the requirements of the Religious Corporation Law of the State of New York.

While it was a fact that plaintiff-respondents did challenge the votes and some of the challenged votes were children, the trial court found, as a matter of fact (and the question was affirmed by both the Appellate Division and the Court of Appeals of the State of New York) that the contested voters were not members of the Ebenezer Baptist Church. The language to the effect that they were children of tender age, etc. was not the basis of the learned Special Referee's findings of fact.

It is respectfully submitted that the Appellate Courts are bound by findings of fact which have been affirmed by the Appellate Courts of the State of New York and as such findings of fact are the law of the case.

There must have been times when Mr. Miles thought that he was at the wrong church because there were so many strangers present. Of course, he challenged such persons. This was according to the stipulation and agreement (1727) left the matter to the Special Referee to determine.

The learned Special Referee saw and heard these persons. In addition he heard the testimony of all other witnesses which included testimony as to what the by-laws were of the church and he examined all of the books that were offered in evidence and his decision as to each witness was factual and should not be disturbed on this appeal.

(d) Distinctions to be noted:

We also note that great stress is placed by appellant upon the case of *Walker Memorial Baptist Church* v. *Samuels* 285 N. Y. 462. This case is so far distant from the within matter that we do not need to enter into a long discussion on same. Suffice it to say that a stipulation governing the actions of the parties was not entered in this *Walker* case. However, we cannot allow certain quotations in the petition to pass unnoticed.

On page 3, petitioner barefacedly stated "because the petitioner is an officer of the church, the spiritual body and not an officer of the corporation." This rash statement in appellant's brief entirely ignores the following exhibits found in the record: Plaintiffs' Exhibit 3, at pages 678 and 679; plaintiffs' Exhibit 4 at pages 680 and 681. In both of

these exhibits we find resolutions that have been signed by Anderson W. Wilson, as President of the religious corporation, Ebenezer Baptist Church, Inc. These exhibits are self-explanatory and completely nullify appellant's argument to the contrary.

We need not remind this court that it should take jurisdiction only on constitutional questions of law while the only questions involved in this application are factual questions and that all of these factual questions were decided in respondents' favor and are supported by substantial evidence. Consequently, there are practically no problems that requires the court to take jurisdiction.

It must also be noted that the Appellate Division which court has the power to pass on questions of fact may have found different facts upon a theory different from that of the trial court with which to sustain the judgment. This was proper as an affirmance of the judgment below in the Appellate Division and may be on any sufficient ground found in the evidence. *Erie R. Co.* v. *International R. Co.* 209 App. Div. 380, 384, aff'd. 239 N. Y. 598.

This follows in line with the rules that a correct decision should not be reversed merely because a wrong reason has been assigned therefor. *Goodrich* v. *Ross, Ketchum Co.* 274 App. Div. 157, 160; *Korde Corp.* v. *Casino Classics, Inc.* 280 App. Div. 740, 742.

(e) The cases cited by appellant have no application to the within fact:

We need not spend much time in discussing the cases cited by appellant. The law expounded by them is not disputed. However, they are foreign to the facts of this case

in that they do not aid the court in any manner. This is not a situation where a rector was told that he had voluntarily entered the ministry and thereby became subject to the rules and canons of the church and he must pursue his remedies within the organization (*Rector* v. *Melish*, 301 N.Y. 936, certiorari denied, 340 U. S. 936). Nor does the case involve burial in a cemetery where the church prohibits same because of failure of the deceased to die in communion with the church (*McGuire* v. *St. Patrick's Cathedral*, 54 Hun 207). This certainly is not the case where the court's jurisdiction was invalid to "revise or question ordinary acts of church discipline" (*Waller* v. *Howell*, 20 Misc. 236). The remaining cases cited by appellant are all in the same vein and it is a waste of time to discuss them. Sufficient is it to point out to this court that it is admitted that the Ebenezer Baptist Church does not have a high judicatory (305, 324-326) and the right to vote in the church is controlled by its by-laws (307-309, 340-342, 371, 372, 385-388). The overwhelming evidence in the case compelled the Special Referee to find as a question of fact that the church had by-laws (119) and with the aid of these by-laws the questions left to the Special Referee (1727) were decided. No cases have been cited by appellant where pursuant to stipulation and agreement the court involved the vote of non-member outsiders who had wrongfully attempted to interfere with the church's right to have its members decide its future course.

It is clear from the above that no constitutional questions were raised at the trial term, so, therefore, they could not be raised in the Court of Appeals or in this court. *The Matter of City of Yonkers* v. *M. E. D. Corporation*, 262 N. Y. 548; *Nod-Away Company, Inc.* v. *Carroll*, 240 N. Y.

252; *Gleanswer Compressed Air Supply Company, Incorporated* v. *Thompson-Starrett Company*, 245 N. Y. 509.

In the instant case, we have even more than such technical grounds.

As pointed out above, the church in question was not part of a system that had an appellate judicature such as the Roman Catholic Church. Each church is a separate and independent unit whether Congregational, Baptist or Jewish. However, it has been the contention of the appellant in this court that only the church body and not the court could have passed on the qualification of voters. In other words, he has contended that the very "ringers" who corrupted the election should have determined their own qualifications to vote. This is certainly a ridiculous argument; but in view of the fact that at the hearing the qualification of the voters were determined pursuant to the stipulation and pursuant to the theory evolved by the appellant and his counsel, we do not need to even consider the far-fetched assertions.

We again inform this court, and it is obvious from both the majority in the Appellate Division, and unanimous affirmance in the Court of Appeals that the affirmance was upon the ground that each and every challenged voter whose challenge was sustained was not a member of the church and a pure outsider coming without membership or qualifications to support him and this included the challenged children. It is clear in the record that their right to vote did not only depend upon their age, because each and evry child whose vote was disregarded was proven to be *not* a member of the church under any circumstances.

So once more, it is clear that constitutional grounds are not open as the affirmance was on other grounds. *Matter of Haydron* v. *Carroll*, 225 N. Y. 84 at page 88.

(f) Defendant having proceeded to enforce the terms of the judgment cannot contend same is void and appeal therefrom:

On the hearing the attorney for plaintiff notified the Special Referee that moneys have been collected for the Church but he did not know what to do with it because he was unable to contact the other attorney prior to the trial (1862, 1863).

The Appendix A attached to appellant's brief shows that he recognized both the stipulation and judgment herein so he no longer is in a position to contend that both are void.

Murphy v. *Spaulding*, 46 N. Y. 556;
Knapp v. *Brown*, 45 N. Y. 207;
Bennett v. *Van Sickle*, 18 N. Y. 481;
Metropolitan Trust Co. v. *Longacre Electric Light & Power Co.*, 223 N. Y. 69.

Attached to this brief is Appendix A which further supports this point.

In support of this point we submit subpoena, summons and complaint served after the judgment which was entered which is a ratification of stipulation of settlement and the judgment. Exhibits C, D and E— It is proper to submit uncontroverted evidence to affirm a judgment.

O'Connor-Sullivan, Inc. v. *Otto*, 283 App. Div. 269, 127 N. Y. S. 2d 373;
Latourelle v. *New York Central Railroad Company*, 275 App. Div. 123, 89 N. Y. S. 2d 296.

Summary of Argument

Petition must fail because:

(a) it fails to specify the raising of the alleged constitutional question in the court of first instance;

(b) it raises questions of fact which have been disposed of by the Trial Court and affirmed by the Court of Appeals of the State of New York, said questions of fact not being subject to the review of the Supreme Court of the United States;

(c) the Court of Appeals of the State of New York has determined that the alleged constitutional questions are not constitutional questions and, if anything, they are of an insubstantial nature;

(d) any alleged constitutional questions were waived by the petitioner in entering into a stipulation of settlement in the court of first instance;

(e) any alleged constitutional questions were further waived by the petitioner in that petitioner in other plenary actions and proceedings sought to enforce both the stipulation and the judgment based upon it. Petitioner cannot contend that the stipulation and judgment are void and at the same time proceed to enforce both the stipulation and judgment.

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted,

SOLOMON Z. FERZIGER
Attorney for Plaintiffs-Respondents
16 Court Street
Brooklyn, New York

On the brief:

SOLOMON S. FERZIGER
HERBERT H. PENSIG
BERNARD MEYERSON

APPENDIX "A"

Decision and Findings of Hon. Meier Steinbrink, Official Referee

NEW YORK SUPREME COURT,

KINGS COUNTY.

Special Term, Part III.

[SAME TITLE.]

Brooklyn, N. Y., December 19, 1957

Before

Hon. Meier Steinbrink,
Special Referee.

Appearances:

Solomon Z. Ferziger, Esq., (16 Court St., Brooklyn, N. Y.) Attorney for the Plaintiffs.

Pokorny, Schrenzel & Pokorny, Esqs., (66 Court St., Brooklyn, N. Y.) Attorneys for the Defendant, By Nathan Amchan, Esq., of Counsel.

The Referee: The following will be the findings in this case in keeping with Section 440 of the Civil Practice Act. In addition to what I shall say, either side may submit to me additionally requests for findings of fact or conclusions of law, but I say to both sides that any such requests to find, if they are inconsistent with what I now purpose to dictate to the record will be refused.

This is an action which was began in September, along about the 13th of September, 1957, in which the plaintiffs

are Arbie R. Miles and Ed Brown, individually and as deacons, trustees and members of the Ebenezer Baptist Church, and Ebenezer Baptist Church, Inc., against Anacin W. Wilson, individually and as pastor of—it says Ebenezer Baptist Church, Inc. I pause here to observe that there can be no pastor of a corporation. That is evidently a typographical or stenographic error. But in this complaint they ask for an injunction restraining Wilson and any of his representatives from acting as pastor of the Ebenezer Baptist Church and from entering upon the property of the plaintiffs or in any way attempting to conduct religious services; also enjoining him from assuming or exercising any dominion or control over the church or any of its property, funds, etc.; furthermore, for injunction directing him to remove from and deliver us possession of the church and turn over to the plaintiffs, as such deacons, all the records, documents, etc., which he may have, or from interfering with the control of the worship and spiritual jurisdiction of the church, and declaring the rights and other legal relations of the parties.

After this action was begun the parties had one or two rather long conferences with me, as the result of which they entered into a stipulation in court on October 21, 1957, which was termed a stipulation of settlement. Some of the provisions of this stipulation are either no longer applicable nor germane to the decision of this case. There, however, survive that stipulation the provision that the charges against the defendant Wilson were to be heard by the Board of Deacons and that if they voted to entertain, then a notice to that effect should be given to the pastor, giving him an

opportunity to appear with his witnesses, if any, at a time and place that was stipulated. There were such charges, there was such a meeting held on October 30, 1957, of which we have the minutes.

I pause here to say that many of these good colored people are not of the highest intelligence, nor of education, and it is for that reason that in many respects some of these writings are not written as grammatically or in as perfect English as one would expect from a lawyer or layman who had a good education.

The Board of Deacons considered the charges and by more than a majority of the vote, according to the minutes, they entertained the charges, after motion was made, seconded and accepted, and the vote at that time was by a majority. It is stated that the minutes were accepted and adopted.

Going back to the stipulation of settlement, it was provided that there was to be a vote of the congregation on the question of the pastor vacating the parsonage. The question of the pastor vacating the adjoining premises, 1106 Herkimer Street, was raised, but will not be disposed of at this time because a pastor contends that he is the individual owner thereof and that it isn't church property.

I say now, without embodying it in the judgment, that he is not the owner of the premises. Ownership of those premises is governed by Article 7 of the Religious Corporations' Law. He doesn't pretend to have any deed. He has what is termed a contract where on behalf of Ebenezer Baptist Church, Inc., it was set forth what the consideration was and that he was to later get a deed, but one thing that

should be emphasized is that he, signing himself as a trustee, was signing this agreement to have conveyed to himself this property. That is absolutely contrary to law, for a trustee owes to the principal the duty of highest care and honesty, as was set forth in *Meinhardt* against *Solomon*.

The stipulation further provided that the Court was to retain jurisdiction and if it became necessary to interpret or enforce the stipulation, then either party might apply upon three days' notice for such relief as they might believe themselves entitled to.

Now comes the important part of this stipulation of settlement and the part that must be decided here. It is paragraph 14. "In the event a special stated meeting of the church society or congregation as a sequence of the steps herein above set forth is required, the representatives of the Honest Ballot Association shall be called in to supervise the vote taken at such meeting and the expense thereof shall be borne equally between the parties hereto. The certification of the Honest Ballot Association as to the vote shall be binding upon the parties hereto."

I turn now to the certification by the Honest Ballot Association. It is in evidence here as Defendant's Exhibit H. It sets forth that there were 75 unchallenged ballots and 25 challenged ballots. Both sides seem to be in accord that the vote was taken, so far as unchallenged ballots are concerned, that those votes were not in and of themselves binding on both parties, because if they were, then under the unchallenged vote against life tenure there were 43, while the total of unchallenged votes for life tenure was 31. The same vote identically was recorded with regard to whether

they desired that the services of Wilson be terminated. 45 voted to dismiss, 31 voted to retain. In addition, there was one challenged vote against life tenure—that was the vote of John Townes— and on this trial that challenge was withdrawn, for which reason that vote must be added to the 43. That makes 44. There were 24 challenged votes for life tenure, and there were also 24 challenged votes on the vote to retain. This was signed and sworn to by George J. Abrams, the executive secretary, the committee on labor elections, of the Honest Ballot Association.

The Honest Ballot Association, in the performance of their duty, returned as Schedule B the challenged ballots, made up of 25 names. The first one we may disregard, because that is John Townes, and that has already been disposed of. Of the remaining 24 I now hold that the ballots of Barbara Stewart, of John N. Lewton, of Henry Wyne, of Nathaniel Lawton, of O. B. Barden, of Normadean Mitchell, of Shirley Stewart, of James Tate, of Jennie Noel, of Edith Brown, of Phyllis Blake, of Connie Mae Barden, of Linda Stewart, and of William Powell, I hold that the challenge is sustained, and that those were not valid votes.

I base this decision on a number of grounds. Among others, two of them, O. C. Barden and Connie Mae Barden had left the Ebenezer Baptist Church and had joined the Disciples of Christ.

Among the others there were immature childrens. It won't do to say that a child four or five or six years of age, who can just lisp the English language and who has no understanding of what he or she is doing, that those people, influenced by a parent or a grandparent, could pass

upon questions of this kind. Some of these children, when they were called here to the stand, were shown the official ballot used by the Honest Ballot Association and annexed to Schedule A, and they knew nothing about what the word "tenure" meant nor the word "dismissed" or the word "retained." How anyone could possibly say that votes of people of that kind should be counted passes my understanding. On might just as well say that if someone had been a member of the Ebenezer Baptist Church and thereafter was in a state mental institution, that they could bring him in to vote at this so-called election.

It shocks one's conscience to think that on questions which were as serious to these folks as the questions that were here presented, and undoubtedly presented at the Board of Trustees' meeting on October 20, 1957, when Wilson asked for forgiveness for any wrong he had done, how little children like that, among them this little Shirley Stewart, who at the time of testifying was only nine years of age, and when questioned she just didn't know what it was about, and the same was true of these other infants.

With respect to a number of others, and I include even some of the reverends who have testified here, it amountd to nothing more or less than what we speak of in politics as an attempt to stuff the bollot box. I disregard some of them absolutely and entirely. The unfortunate part of this case is that the defendant Wilson treated this church, and its properties, as being his vest-pocket possession, and it wasn't anything of the kind. These folks had the right in the religious society to decide these matters themselves, and when I say that I am not dealing with any ecclesiasti-

cal question, for the very simple reason that the Civil Courts never interfere with ecclesiastical questions where there is ecclesiastical control or an ecclesiastical judicatory. That was held many years ago by the United States Supreme Court in the case of *Watson* against *Jones*, and I myself passed upon this in the now more or less famous case of John Howard Melish of the Trinity Protestant Episcopal Church over here at Montague and Clinton Streets. I made it entirely clear in that opinion that where there is ecclesiastical judicature which passes upon a question, that the Civil Courts would not interfere. That opinion and decision appears in the Miscellaneous Reports. It was affirmed by our Appellate Division without opinion; it was affirmed by the Court of Appeals without opinion, and the United States on application denied a writ of certiorari.

Now I come to another feature of this case. From my list of votes it appears that by every stretch of the imagination in favor of the defendant there were only seven votes cast which were good. If these are added to the 31 which were unchallenged, it would give a maximum of 38, and out of the 100 ballots cast there would be a predominance and much more than a majority to rescind Wilson's life tenure and to desire that his services be terminated

I think it is most unfortunate that counsel for Mr. Wilson sought to inject into this case his own testimony in order to bolster his client's case, and that was done in this way: Nothing had happened up to that time which called upon him as a matter of duty to take the stand. However, he testified to certain conversations which he claimed to

have had with the plaintiffs' attorney and the associate of the plaintiff. And this he stated himself on the theory—it seems to me fanciful theory—of an estoppel. Estoppel may be invoked, not on the basis of conversations between the attorneys, for repeatedly it has been held, and is even provided in our rules, that oral stipulations between lawyers are not recognized. It was the simplest thing in the world if there were any such conversations, part of which I gravely doubt, to have made a list of the members and then for the attorneys both to have affixed their names, their signatures, to the list, because then it might well be held that it was a stipulation made in the litigation.

I don't know that it is necessary to go much further in this case. The whole set of ordination is a very simple one, it is not marked by college education or college graduation or anything of that kind. Take the case of Harrison, who is an assistant pastor. His testimony was clear, and I accept most or all of what he said. He told what his education was. I believe I inquired. Then through some Mumbo Jumbo Wilson ordained him and in that way made him a pastor.

Now as to this book of Hiscox, Defendant's Exhibit G, which is in evidence, some of them, even Wilson's brethren, who are reverends, when confronted by it said that they were not guided by it and didn't agree with it.

With reference to the body of some of the things stated by Hiscox, it may well be that what he stated were his opinions which should govern these Baptist churches, each one of which is autonomous. They are on congregational lines, the same as the Congregational Church and the same as

synagogues of the Jewish faith. There is nothing above them to control or guide them, excepting the Almighty God.

The thing that the defendant seems to rely upon with respect to some of these matters is not at all contained in the body of the provision with regard to church membership, but rather is a footnote which Hiscox himself makes to what he has written, namely, Note No. 14, on page 79, where he says that they all have equal rights and immunities, without distinction of sex, age or condition. That may very well be with regard to worship, but I absolutely decline to hold that that applies to elections or voting such as we have had in this case, for the very simple reason, as I have already pointed out, that some of these children were of a very low order of intelligence and didn't even know the meaning of the words on the ballots on which they pretended to noted.

There is also a provision here which provides that where one goes to or joins another church he is automatically out. Some of these people who had voted, as I have already pointed out, two of them at least, joined the Disciples of Christ. One might as well say that you can go into the Methodist Church or the Lutheran Church or some other church and still retain membership in Ebenezer. That will shock the conscience. Religion isn't quite as loose as that.

I am going to try to terminate this. I am regretful that this matter ever came before me. This has been the seventh day of the trial. Had counsel on both sides adhered to the one question of whether or not these challenged ballots were good or invalid I believe this whole case could have

been tried in two days or less, but they wandered far afield here and brought in questions of theology and everything else.

Nothing that I say here is in contravention of other decisions with respect to the provisions of Article 7 of the Religious Corporations Law, because that refers only to property rights, temporal matters. But even there you have at least a hint from the Legislature of what they thought regarding the property matters, for it is provided that only those shall be entitled to vote who have attained their majority.

Wherever there is any dispute in the facts with regard to any of the witnesses called by the defendant and those called by the plaintiffs, the findings of fact will be for the plaintiffs.

I say this regretfully again, because some of Mr. Amehan's testimony was contradicted flatly by Mr. Herbert H. Pensig, who is a member of the Bar. Pensig has no interest in the actual outcome of this case, but I am afraid Mr. Amehan was carried away by his enthusiasm for his client's cause.

Whatever judgment is submitted here, let it be in accordance with what I have dictated. I am still willing to pass upon any requests to find facts or conclusions of law. There will be no costs allowed to either party.

One further observation before I finish: I want to stress that all of the books and records in this case were kept in the possession of the defendant Wilson, and I find as a fact that this little church did have by-laws under which they acted and that they have not been produced on this trial.

Appendix "A"—Decision and Findings of Hon. Meier Steinbrink, Official Referee

Any proposed findings of fact and conclusions of law, in addition to what I have said, which are to be submitted here, are to be on two days' notice to the other side and all of it must be submitted not later than December 30th.

Mr. Ferziger: Judge Steinbrink, may I make one further request for a ruling for the purposes of peace at this moment. Your Honor has made a finding of fact, conclusions—

The Referee: Wilson is out from this time on. When the judgment is submitted to me, I will stay, voluntarily, though it hasn't been asked of me, my own judgment for thirty days in which the defendant may perfect an appeal if he is so advised. Within the thirty-day period the provisions of the stipulation are still to be observed, namely, alternating at the service.

I, Harry L. White, Official Court Reporter, do hereby certify that the foregoing is a true and correct transcript of the oral decision announced by Mr. Justice Steinbrink, Special Referee, at the conclusion of the trial of the above-entitled case.

Witness my hand this 23rd day of December, 1957.

Harry L. White
Official Stenographer.

Attest:

Clerk.

APPENDIX "B"

Stipulation

SUPREME COURT, STATE OF NEW YORK,

COUNTY OF KINGS.

ARBIE R. MILES, *et al.*,

Plaintiffs,

vs.

ANDERSON W. WILSON,

Defendant.

Brooklyn, N. Y., October 21, 1957.

Before:

Hon. Meier Steinbrink, Special Referee.

Appearances:

Solomon Ferziger, Esq., for the Plaintiffs.

Porkorny, Schrensel & Porkorny, Esqs., for the Defendant, by Nathan Amchan, Esq.

It Is Stipulated and Agreed by and between the attorneys for the respective parties and with the consent and knowledge of the respective parties who are present in Court and who have heard read this stipulation, that the above-captioned matter be and the same hereby is settled upon the following terms and conditions:

Without conceding that the method and form used by the plaintiffs herein heretofore is improper and without recog-

nizing the contention of the defendant that their form was improper and should have been used in another form, the parties agree that the following modus operandi shall be used to settle the dispute herein:

(1) On or before Tuesday evening, October 22, 1957, any member of the Ebenezer Baptist Church who shall so desire may serve upon Andrew W. Wilson, the pastor of the church, a statement in writing setting forth his charges and complaints against the said pastor of the church, or any other reason why he or they believe that the pastor's relationship or employment by the church should be terminated.

(2) On two evenings following the service of the within charges, including the evening that the charges have been served, the congregant or congregants preferring the charges against the pastor shall make themselves available at the church building so that the pastor may discuss the matter with them and discuss in person with them the charges made by them against him, including the request for the termination of his employment. Said discussions shall take place at the church between the hours of 8 p.m. and 10 p.m. in the evening.

The congregant or congregants desiring to make charges against the pastor shall be able to serve the pastor at either the study or the church between the hours of five and seven p.m. on Tuesday evening, October 22, 1957, and the pastor agrees to be available for the service of such charges.

In the event he is unavailable, Nathan Amchan agrees to serve as agent to receive such charges during the hours herein specified in the event that Reverend Wilson is unavailable during those hours to receive such service, and it

is agreed that service upon Nathan Amchan as counsel to the defendant shall be deemed service upon the defendant himself.

(3) In the event that the member or members after their discussion with the pastor still are unsatisfied and desire to press the matter further, then, in the event the pastor shall on or before October 25, 1957, at 8 p.m., which shall not be less than 40 hours after the last session, serve upon plaintiffs Brown and Miles a copy of his answer to the charges preferred.

Said answer shall be delivered to them personally at the church at 110 Herkimer Street, Brooklyn, New York, no later than 8:30 on the evening of October 25, 1957, and the said individual shall attend at the church for the purpose of receiving such answer, if necessary.

(4) In the event that the pastor has been able to discuss the matter with the congregants preferring the charges and the congregants do not desire to proceed with the matter any further, then this matter shall be deemed as settled and no further proceedings need be taken by either side as against the other.

(5) In the event, however, that the written answer is received as set forth hereinbefore and is not satisfactory to the members making the charge, then they may submit this matter further to the Board of Deacons for further action and consideration by the Board of Deacons.

(6) For the purposes of this stipulation, a special meeting of the Board of Deacons may be called by Arbie R.

Miles for Monday, October 28, at 8 p.m. at the church for the purposes only of this present matter. All parties stipulate and agree and concede that such short notice is sufficient and will not be questioned.

It is agreed that the notice when sent by Arbie R. Miles on today's date to all members of the Board of Deacons calling for the meeting presupposes that the charges which may be preferred shall be the only matter of business before the Board of Deacons at the stated meeting of October 28, with the distinct understanding by all parties hereto that the calling of the meeting for Monday, October 28, 1957, is in no wise to be construed as a premeditated or aforethough action to prejudice one side against the other, but merely a precautionary method to have a duly constituted meeting of the Board of Deacons to receive the matter should the aggrieved members still deem it necessary to submit it to the Board of Deacons, and for the purpose of having an orderly schedule and timetable of the proceedings.

(7) At the said meeting of the Board of Deacons the charges will be considered, and if the Board of Deacons by majority vote entertain the grievance, then a notice to that effect shall be forthwith given to the pastor either personally or by telegram, giving him an opportunity to appear before the Board of Deacons, with his witnesses, if any, at a scheduled meeting of the Board of Deacons held not less than 40 hours thereafter after the sending of the notice, and it is stipulated that such short notice will not be questioned by any party.

(8) The Board of Deacons shall consider the grievance and the pastor's proof, including that of any witnesses he may offer, and in the event that the Board of Deacons are satisfied by majority vote to dismiss the charges, that shall terminate the controversy and no further steps shall be taken by any party.

(9) In the event, however, that the Board of Deacons is not satisfied and shall by majority vote resolve to present the grievance to the church membership, the Secretary of the Board of Deacons shall prepare a written request to the pastor to call a church meeting, which written request shall specifically contain the purpose of the said requested special church meeting.

In the event that such written request is made by the Board of Deacons calling for a special church meeting, the pastor shall, without any discretion thereon, read the said written request at two successive Sunday church services next preceding the scheduled date of the said requested special church meeting.

In the event that the pastor fails to read such request, any member of the Board of Deacons or any member of the church may read said notice and it shall have the same validity as though read by the pastor at two successive Sunday church services.

(10) In the event that the meeting of the Church Society is called, that is, the meeting of the entire church body, and by majority vote the charges are not sustained, then in that event the matter shall be terminated and no further action shall be taken by any party and the pastor shall remain as heretofore.

(11) In the event, however, that the membership sustains the charges and votes to terminate the relationship as pastor to the church, then and in that event the pastor stipulates and agrees that he will forthwith terminate the pastorate, or at such other time, if any, fixed in the resolution.

(12) The question of the pastor vacating the adjoining premises, 1108 Herkimer Street, was raised but will not be disposed of at this time because the pastor contends that he is the individual owner thereof and that it isn't church property. That question, however, remains open without prejudice to either party.

(13) It is further stipulated and agreed that the Court retains jurisdiction of this action and that in the event that it is necessary to interpret or enforce this stipulation or take any further action with reference to the case, then either party may apply to the Court upon three days notice to the other for such relief as to the Court may appear just and proper.

(14) In the event a special stated meeting of the Church Society or congregation as a sequence of the steps hereinabove set forth is required, the representatives of the Honest Ballot Association shall be called in to supervise the vote taken at such meeting and the expense thereof shall be borne equally between the parties hereto. The certification by the Honest Ballot Association as to the vote shall be binding upon the parties hereto.

(15) The only persons entitled to vote at a meeting of the Board of Deacons or at a stated meeting of the Church

Society or congregation shall be those members who were such on September 10, 1957.

(16) Without conceding the allegation of the defendant herein that the defendant had heretofore received a life call from the congregation, before a vote may be taken upon the question of the termination or retention of the pastor as set forth hereinbefore, it shall be necessary that the resolution which the defendant alleges and claims was heretofore passed giving him life tenure shall be rescinded by a majority vote of the congregation.

(17) From the date hereof until all of the steps which may be taken as set forth in this stipulation, the defendant pastor shall not take the pulpit and shall not preside at any church services, it being expressly understood, however, that this shall not prevent him from officiating at a religious wedding, funeral or visiting the sick. All activities which were conducted prior to September 10, 1957 shall continue as heretofore without interference by the pastor or the aggrieved members, said activities being conducted by the same individuals who conducted these activities prior to September 10, 1957.

(18) It is further agreed that the pulpit will be occupied from this time forth and for as many Sundays as may be necessary until this controversy is resolved in accordance with this stipulation as follows: For the first Sunday the present pastor shall have the privilege of inviting a visiting minister to conduct morning services, and the Chairman of the Board of Deacons shall have the privilege of inviting a visiting minister to officiate at the afternoon services.

Each succeeding Sunday thereafter there shall be rotation, in that on the second Sunday of this period, by way of illustration, Deacon Miles shall have the privilege of inviting a minister to preside at the morning services and Reverend Wilson shall invite one for the afternoon service.

(19) It is further understood that both parties hereto will refrain from taking any action which might bring discredit on the church or create additional controversy, it being understood that all parties enter into this stipulation in good faith without mental reservation, and that the visiting ministers shall maintain an attitude of neutrality and shall make announcement to the effect that they are invited to speak there by voluntary consent of the parties to this unfortunate dispute.

The Special Referee: The plaintiffs Arbie R. Miles and Ed Brown and the defendant Anderson W. Wilson are present and have heard this stipulation.

Pending the carrying out of all of the terms of this stipulation, the defendant, Rev. Anderson W. Wilson, is restrained from selling, mortgaging or otherwise encumbering or disposing of the property referred to as the parsonage.

Mr. Amchan: I wish to ask you to change the word "restrained" to "agrees to," because this is a voluntary thing.

The Special Referee: All right, "agrees to," and by agreeing to it he is restrained from doing it.

I think the check account should be subject to countersignature by the two lawyers. They are both honorable men and I can trust them both.

Mr. Amchan: That is satisfacory.

Mr. Ferziger: Yes, satisfactory.

Mr. Amchan: I think the reporter omitted the sentence we agreed upon that notice to the members of the Board of Deacons for the proposed meeting on Monday, October 28, should be sent to them I think it was today.

Mr. Ferziger: It wasn't agreed. We said we could. We will send the telegrams today, Judge.

The Referee: The plaintiffs, Arbie R. Miles and Ed Brown, and the defendant, Anderson W. Wilson, are present and have heard the stipulation read. Pending the carrying out of all of the terms of this stipulation the defendant, Rev. Anderson W. Wilson, is restrained from selling, mortgaging or otherwise encumbering or disposing of the property referred to as the parsonage.

Mr. Amchan: I would like to have you change the word "restrained" to "agrees to" because this is a voluntary thing and—

The Referee: All right, "agrees to," and by agreeing to it he is restrained from doing it.

I think the check account should be subject to countersignature by the two lawyers. They are both honorable men and I can trust them both.

Mr. Amchan: That is satisfactory.

Mr. Ferziger: Yes, satisfactory.

APPENDIX "C"

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF KINGS

ABBIE R. MILES and ED BROWN, individually and as Deacons, Trustees and members of the EBENEZER BAPTIST CHURCH INC., EBENEZER BAPTIST CHURCH INC.,

Plaintiffs,

—against—

ANAGIN W. WILSON, individually and as Pastor of EBENEZER BAPTIST CHURCH INC.,

Defendant.

SIR:

PLEASE TAKE NOTICE that pursuant to paragraph 13, paragraph 18, paragraph 19 including the material on page 12 and 13 of the stipulation of settlement dated October 21, 1957 before the Honorable Meier Steinbrink, Special Referee, and pursuant to the judgment of the Honorable Meier Steinbrink dated December 30, 1957, the defendant will apply to the Honorable Meier Steinbrink at his chambers at 9:00 A.M., on Tuesday, February 18, 1958 in the Municipal Building, Fulton and Joralemon Streets, Brooklyn, New York for an interpretation and an enforcement of his stipulation of settlement and the judgment entered herein on December 30, 1957, with respect to certain portions thereof.

Dated: New York, February 15, 1958.

Appendix "C"

Yours, etc.,

SNITOW & SNITOW
Attorneys for Defendant
Office & P. O. Address
152 West 42nd Street
New York, N. Y.

To:

FERZIGER & PENZIG, Esqs.
Attorneys for Plaintiffs
Office & P. O. Address
16 Court Street
Brooklyn, New York

APPENDIX "D"

Order to Show Cause

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF KINGS

Our File No. 1025

EBENEZER BAPTIST CHURCH, INC.,

Plaintiff,

—against—

ED BROWN and ARBIE R. MILES,

Defendants.

ORDER TO SHOW CAUSE

Upon the annexed affidavit of India Wilson, duly verified February 15, 1958, the summons and verified complaint herein, let the defendants, or their attorneys show cause at Special Term Part I of this Court, to be held in and for the County of Kings at the Municipal Building Room 1100H Court at Fulton and Joralemon Streets, Brooklyn, New York, on the 7th day of March, 1958 at 10 a.m. or as soon thereafter as counsel can be heard, why an order should not be made herein enjoining and restraining pendente lite, the defendants, their agents, or representatives, during the pendency of this action from:

(1) Disturbing Sunday religious services.

(2) Changing the locks on the church doors.

(3) Misappropriating the monies of the church corporation.

(4) Misappropriating the monies of the Sunday School.

(5) Violating the stipulation of settlement made before the Hon. Meier Steinbrink in Miles v. Wilson on October 21, 1957.

(6) Violating the judgment made by the Honorable Meier Steinbrink, Special Referee dated December 30th, 1957. (Underscoring ours)

(7) Illegally calling meetings, without the knowledge, permission or consent of the plaintiff.

(8) Making By-Laws, without the knowledge, permission or consent of the plaintiff.

(9) Electing Trustees and Deacons in violation of law, against the wishes, knowledge, permission of consent of the plaintiff, and in violation of the stipulation of settlement of October 21, 1957.

(10) Continuing to invite ministers to preach in the church in violation of the judgment dated December 30th, 1957, the stipulation of settlement dated October 21, 1957 and against the wishes knowledge, permission or consent of the plaintiff and its official bodies.

(11) Causing crowds to collect in front of the church and causing the church to be disgraced and humiliated amongst its friends and neighbors by loud and boisterous conduct, in order to take over the control of the plaintiff, and against its wishes and against the wishes of its membership and its official bodies.

(12) Restraining the defendants from interrupting and breaking up religious services and religious meetings, while being conducted by the plantiff and its duly constituted official bodies.

(13) Restraining the defendants from refusing to deposit the monies of the church corporation, in the church corporation bank account, the checks to be countersigned by the attorneys, pursuant to the stipulation of October 21, 1957, so that the church can pay its bills, which due to the defendants' misappropriation of the funds, as aforesaid, the plaintiff is unable to pay the same.

(14) Restraining the defendants from threatening to continue to defy the plaintiff, its Board of Trustees, its Board of Trustees, its Membership, the Laws of the State of New York, and the canons, customs and usages of the church by doing the acts and things and threatening to do the acts and things hereinabove and hereinafter set forth.

(15) From interfering with and from removing any and all of the records, documents and papers of the plaintiff and from threatening to do so, and for such other, further and different relief as to this Court may seem just and proper in the premises.

And it appearing from the affidavit, and the summons and the complaint that the defendants threatened to and are about to continue to do the aforesaid acts and things, all of which will be detrimental to the interest of the members of said plaintiff, and its church, and that irreparable injury, loss and damage will result to the plaintiff, and its church.

Appendix "D"—Order to Show Cause

The defendants having been personally put on notice that this order was being presented for signature today, based on the aforesaid arguments held on February 14, 1958, I do hereby order and direct that service of a copy of this order, and the papers upon which the same has been granted upon the defendants or any of them, on or before 5th of March, 1958, shall be deemed sufficient notice of motion herein, and of the application for this injunction pendente lite.

/s/ Edw. G. Baker
Justice of the Supreme Court

Dated at
Brooklyn, N. Y.
Feb. 19, 1958

APPENDIX "E"

Summons With Notice

SUPREME COURT
OF THE STATE OF NEW YORK

COUNTY OF KINGS

EBENEZER BAPTIST CHURCH, INC.,

Plaintiff,

—against—

ED BROWN and ARBIE R. MILES,

Defendants.

Plaintiff designates Kings County as the place of trial.
Plaintiff resides in Kings County.

SUMMONS WITH NOTICE

To the above named Defendant:

YOU ARE HEREBY SUMMONED to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated, New York, February 15, 1958

SNITOW & SNITOW
Attorneys for Plaintiff
Office and Post Office Address
152 West 42nd Street
New York, N. Y.

Appendix "E"—Verified Complaint

Verified Complaint

SUPREME COURT
OF THE STATE OF NEW YORK

COUNTY OF KINGS

EBENEZER BAPTIST CHURCH, INC.,

Plaintiff,

—against—

ED BROWN and ARBIE R. MILES,

Defendants.

VERIFIED COMPLAINT

The plaintiff complaining of the defendants, by its attorneys, Snitow & Snitow, respectfully states to this Court and alleges:

First: That the plaintiff is a religious corporation duly organized and existing under the laws of the State of New York and having its principal place of worship in the County of Kings, City and State of New York.

Second: That the plaintiff maintains as part of the work of its parish a church at 1110 Herkimer Street, County of Kings, City and State of New York, known as the Ebenezer Baptist Church and owns the aforesaid church building and the land upon which it is built.

Third: That the plaintiff is an independent Baptist Church corporation not governed by any central governing

body, owing an allegiance to its membership, and the State of New York.

Fourth: That at all times hereinafter mentioned, the defendants Ed Brown and Arbie R. Miles were officers and members of the plaintiff.

Sixth: Upon information and belief the defendants are residents of the County of Kings, City and State of New York.

Seventh: That on or about the 1st day of September, 1957, the defendants entered into a conspiracy, either jointly, or severally, either expressly or by implication of law which had for its purpose, the destruction of the plaintiff, the character assassination of its pastor, Reverend Anderson W. Wilson, the misappropriation of the funds of the church corporation, the disturbance of religious services, the changing of the locks on the doors of the church, the misappropriation of the monies of the Sunday School, the use of the name of the church corporation, illegally and in violation of law in the Supreme Court, Kings County in an action entitled Arbie Miles, et al., v. Anderson W. Wilson and so forth, defendant, to illegally cause the discharge of the minister, to illegally attempt to exercise jurisdiction and control over the holding of services, the exercise of ministerial function of the church, control over the worship and spiritual jurisdiction of the church, control over the church and the parish, defiance of the laws of the plaintiff and the State of New York, defiance of the Canons, Customs and Useages of the church, decency and

good order, threaten to and have in fact by display of unseemly conduct, in defiance of the plaintiff, exercised official duties and office and carried on meetings and religious services in a manner calculated to desecrate the sanctity of the church building, hold the plaintiff up to obloquy, scorn and ridicule, and seriously interfere with the sacred work in which the plaintiff is engaged.

Eigrth: That the defendants, pursuant to the aforesaid conspiracy, did individually, and/or jointly and/or severally the following: On the 17th day of September, 1957 the defendants presented to the Honorable James S. Brown, Justice of the Supreme Court an order to show cause, summons and complaint, in which they sued and named the plaintiffs as follows:

> "ARBIE R. MILES and ED BROWN individually and as Deacons, Trustees and members of EBENEZER BAPTIST CHURCH INC., and EBENEZER BAPTIST CHURCH, plaintiffs"

The aforesaid papers were presented for signature to Mr. Justice Brown, upon information and belief by the defendants attorneys Solomon Z. Ferziger and Herbert Penzig. That the naming of the Ebenezer Baptist Church Inc., as a plaintiff was illegal, unauthorized and void, in that it was done without permission, knowledge or consent of the board of trustees, and without authorization from the board of trustees pursuant to law.

Ninth: That upon the commencement of the aforesaid action above referred to on or about September 17, 1957

the defendants submitted an order to show cause to Mr. Justice Brown which read in part:

> "Why an order should not be made herein restraining defendant his agents or representatives during the pendency of this action from acting or attempting to act as pastor of the plaintiff church and from entering upon the church property and from interfering with the property, funds and management of the plaintiff church, and from removing any and all of the records, documents and/or indicia of his office as pastor thereof, and for such other and further relief as to this Court may seem just and proper.
>
> • • • ".

That at the time this order to show cause, summons and complaint and affidavit in support of this motion for a temporary injunction by order to show cause was submitted for signature to Mr. Justice Brown no action had as yet been started. Yet, in violation of law, the defendants submitted to Mr. Justice Brown and caused him to include in the said order to show cause which he signed, ex parte, the following paragraph:

> "and it is
>
> ORDERED, that the defendant Reverend Anacin W. Wilson, be and hereby is enjoined and restrained from continuing to act as pastor of the plaintiff church and from entering the property of the said church and from continuing services from the pulpit therein, pending the hearing herein, provided, and ordered,
>
> • • •
>
> • • • ".

That the defendants knew or should have known that pursuant to law no permanent injunction could be granted without a hearing. Not only did the aforesaid defendants take advantage of the defendant, Wilson in that case, they also took advantage of the plaintiff Ebenezer Baptist Church, Inc., here, and in addition thereto took advantage of the Court.

Tenth: That pursuant to the aforesaid conspiracy, the defendants individually and/or jointly, and/or severally failed and neglected to advise the Court at the time these papers were submitted and include in the complaint and the affidavit in support of the motion for a temporary injunction the fact that this plaintiff and Reverend Anderson W. Wilson had entered into a contract, in 1946, wherein the membership of the church had agreed to call Reverend Anderson W. Wilson as its pastor for life, and that on September 17, 1957 when the defendants commenced that action, the aforesaid contract of life was then in full force and effect, and had been for eleven years. That the failure by the defendants to advise the Court of that fact was, upon information and belief, wilful and intentional, and done with the purpose of hurting and injuring the plaintiff, its good name, its pastor, its reputation as a house of worship, and was done maliciously in order to destroy the plaintiff church corporation, the defendants knowing that by concealing that information from the Court, they could proceed in the manner that they were doing whereas if the Court had been advised of the life time contract, the defendants knew that they would first have to attempt to void the life time contract, which would have prevented the form

of proceeding which they took, and assisted them illegally, in their conspiracy and aim to destroy the church and its pastor as above set forth.

Eleventh: That pursuant to the aforesaid conspiracy, the defendants individually and/or jointly, and/or severally drew a complaint and verified the same in which they swore in paragraph Fifth thereof as follows:

> "FIFTH: That on or about the 10th day of September, 1957, a special meeting of the members of the Ebenezer Baptist Church Inc., was held at the premises of the said church located at 1110 Herkimer Street, Borough of Brooklyn, City of New York, at or about 8:00 P.M., and upon the majority vote of the membership, it was voted that the services of Reverend Anacin W. Wilson be dispensed with and that he be discharged as pastor of the said Ebenezer Baptist Church, Inc., and that he cease functioning as pastor thereof. That the said action of the membership was pursuant to custom and useage of the Ebenezer Baptist Church, Inc.
>
> SIXTH: That the said defendant was notified of a special meeting for the purpose of terminating his employment and the said defendant was present at the said meeting wherein the majority of the membership of Ebenezer Baptist Church Inc., voted to terminate his employment as pastor thereof.
>
> • • • ".

Twelfth: That the plaintiff is the Ebenezer Baptist Church, Inc., and at no time did it ever hold a corporate meeting on September 10, 1957 as alleged in paragraph Fifth and Sixth as above set forth, and at no time did the

Ebenezer Baptist Church Inc., in fact on the 10th day of September, 1957 through its membership vote to remove Reverend Wilson as its pastor. The allegation was false, wilful and malicious pursuant to the aforesaid conspiracy made by the defendants individually and/or jointly and/or severally for the purpose of destroying the plaintiff church corporation. The church corporation not only in fact never removed Reverend Wilson on September 10, 1957 as its pastor but in law didn't have the power to do so, and moreover, there was a life time contract between the church and its pastor in full force and effect on September 10, 1957.

Thirteenth: During the court of the proceedings in the action entitled Miles, et al., v. Wilson and so forth, the defendants' attorneys Ferziger and Penzig acting for and on behalf of the defendants [the Plaintiffs-Respondents herein], entered into a stipulation dictated by the Honorable Special Referee Meier Steinbrink on October 21, 1957 together with Pokorny, Schrenzel & Pokorny, the then attorneys for Anderson W. Wilson, the defendant [the Defendant-Appellant herein] in that action, the pertinent parts of which it was agreed by the attorneys and parties as follows: (Matter in brackets and underscoring ours)

> "13. It is further stipulated and agreed that the Court retains jurisdiction of this action and that in the event that it is necessary to interpret or enforce this stipulation or take any further action with reference to the case, then either party may apply to the Court upon three days notice to the other for such relief as to the Court may appear just and proper.
>
> 18. It is further agreed that the pulpit will be occupied from this time forth and for as many Sundays

as may be necessary until this controversy is resolved in accordance with this stipulation as follows: For the first Sunday the present pastor shall have the privilege of inviting a visiting minister to conduct morning services, and the Chairman of the Board of Deacons shall have the privilege of inviting a visiting minister to officiate at the afternoon services. Each succeeding Sunday thereafter there shall be rotation, in that on the second Sunday of this period by way of illustration, Deacon Miles shall have the privilege of inviting a minister to preside at the morning services, and Reverend Wilson shall invite one for the afternoon service.

19. It is further understood that both parties hereto will refrain from taking any action which might bring discredit on the church or create additional controversy, it being understood that all parties enter into this stipulation in good faith without mental reservation,

* * *."

On page 12 of the aforesaid stipulation of settlement dated October 21, 1957:

"The Special Referee: The plaintiffs Arbie R. Miles and Ed Brown and the defendant Anderson W. Wilson are present and have heard this stipulation.

* * *

* * *

The Special Referee: All right, 'agrees to,' and by agreeing to it he is restrained from doing it.

I think the check account should be subject to counter-signature by the two lawyers. They are both honorable men and I can trust them both.

Mr. Amchan: That is satisfactory.
Mr. Ferziger: Yes, satisfactory * * * "

Fourteenth: That pursuant to the conspiracy, and in violation of the stipulation of settlement agreed to by the defendants on October 21, 1957, as aforesaid, before the Honorable Meier Steinbrink, Special Referee, the defendants have collected and received illegally and in violation of law and in violation of the stipulation all of the monies collected in the church from on or about August 1, 1957 to the present time and continuing, and upon information and belief the defendants have misappropriated thousands of dollars belonging to the plaintiff church corporation, without accounting to it, without depositing the monies in the church corporation's bank account, and even in violation of the stipulation requiring that all monies be deposited in the church bank account, payments been made by check on the corporation bank account, the checks to be counter signed by the attorneys for the respective parties in the previous action pursuant to the aforesaid order. (Underscoring ours)

Fifteenth: That pursuant to the conspiracy the defendants, individually, and/or jointly, and/or severally, have in violation of the Penal Law and in violation of Section 19 of this stipulation of settlement dated October 21, 1957,

A. By disturbing religious services and religious meetings in the plaintiff's church on numerous occasions.

B. They have illegally changed the locks on the door in violation of law, in violation of the order of the Board of Trustees, and in violation of the aforesaid stipulation of settlement.

C. They have misappropriated the monies of the Sunday School, and have failed to account for same or deposit same in the church corporation's bank account as required by law. They have failed to have the checks counter signed by the attorneys pursuant to the aforesaid stipulation.

D. They have interrupted religious services in the church, actually stopping the religious service then in progress being conducted by the devotion leader, Mrs. India Wilson and Minnie Wiggins, removed them from the conduct of the religious service in violation of Sections 2070, 2071 and 2072 of the Penal Law, at the instigation, upon information and belief of Herbert Penzig who was then present at the Sunday Evening Services on Sunday, February 9, 1958.

E. The judgment entered in that action on December 30, 1957 by the Honorable Meier Steinbrink, Special Referee provided in part as follows:

> "ORDERED, ADJUDGED and DECREED that the aforesaid provision relating to the rotation of the ministers in the pulpit shall be for the said thirty (30) day period only and it is further
> * * * "

That on Thursday, February 6, 1958 the defendants Miles and Brown had their attorneys Solomon Ferziger and Herbert Penzig conduct a church meeting at the church on Thursday, February 6, 1958. At that time neither Ferziger nor Penzig were members of the church or Baptists, the plaintiff did not authorize, request or permit Ferziger and Penzig to conduct a meeting in its church that particular meeting. That at the said meeting in response to questions

as to whether Miles and Brown were to invite a minister to preach on Sunday, February 9, 1958, Ferziger and Penzig advised the people that the defendants would invite a minister and have a minister preach on Sunday. That this statement was made in spite of the knowledge of the defendants of the above provision of Judge Steinbrink's order, that the rotation of the ministers was to end on January 29, 1958, and in violation of the aforesaid judgment, the defendants did invite and did have a minister of their choosing against the knowledge, permission and consent of the plaintiff church corporation and the duly constituted official bodies of the church preaching on Sunday, February 9, 1958, at the morning service, and again at the evening service by breaking up the religious service then in progress as aforesaid. All in violation of the aforesaid judgment, in violation of the stipulation of settlement of October 21, 1957, in violation of law, and in violation of the customs and usages of the church. Moreover, on February 7, 1958 the attorneys for the plaintiff had sent a registered letter to the defendants advising them that their calculated action was in violation of the aforesaid stipulation of settlement, judgment and stay granted by the Appellate Division, but even in spite of that notice, the defendants in order to destroy the church, ruin its reputation, cause it to split asunder, did the acts complained of as above set forth.

F. The defendants on February 6, 1958 called a meeting for Wednesday, February 12, 1958 in the church and again on Sunday February 9, 1958 called a meeting in the church for February 19, 1958. At the time these meetings were announced, the purpose of the meetings were not announced.

it was not announced whether it would be a Board of Trustees meeting a Deacon meeting, a church meeting or a church corporation meeting. The plaintiff and its duly constituted official bodies at no time authorized the defendants to call these meetings. The calls were unauthorized, illegal and void. They were called solely for the purpose of violating paragraph 19 of the stipulation of settlement of October 21, 1957 with the avowed purpose on the part of the defendants to bring discredit on the plaintiff and create additional controversy, all in violation of law.

G. That the defendants, pursuant to the conspiracy, either individually, jointly or severally announced through Ferziger and Penzig that Ferziger and Penzig were going to prepare by-laws and were going to elect trustees and deacons. That all of these arrangements were not authorized by the plaintiff. These arrangements were made in the church by Ferziger and Penzig with out the knowledge, permission or consent of the plaintiff, against its wishes in violation of the stipulation of settlement dated October 21, 1957, and the judgment of December 30, 1957. (Underscoring ours)

Sixteenth: That the said defendants threatened to continue to defy the plaintiff, its Board of Trustees, its membership, the laws of the State of New York, the canons, customs and useages of the church, and to continue on disturbing the religious services, calling illegal meetings, misappropriated the church funds, misappropriated Sunday School funds, desecrate the sanctity of the church, hold the plaintiff up to obloquy and scorn and ridicule and

seriously interfere with the sacred work in which the plaintiff is engaged.

Seventeenth: That the plantiff has duly authorized the commencement and prosecution of this action.

Eighteenth: That the plaintiff has no adequate remedy at law for the wrongs threatened to be done and done by the defendants, as aforesaid.

AS AND FOR A SECOND CAUSE OF ACTION

Nineteenth: Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "First" through "Eighteenth" with the same force and effect as though fully set forth herein verbatim.

Twentieth: That by reason of all the foregoing, the plaintiff has suffered damages in the sum of Two Hundred and Fifty Thousand ($250,000.00) Dollars.

WHEREFORE, Plaintiff demands judgment against the defendants on the first cause of action that the defendants be forever enjoined

1. From disturbing religious services.

2. From illegally calling or holding religious meetings without the permission, knowledge and consent of the plaintiff.

3. From disturbing religious meetings.

4. From causing riots and disturbance in front of the church by changing the locks on the church door without

the knowledge, permission or consent of the plaintiff and in violation of law.

5. From misappropriating church monies.

6. From misappropriating Sunday School monies.

7. From violating the stipulation of settlement dated October 21, 1957 in Miles v. Wilson as aforesaid.

8. From violating the judgment dated December 30, 1957 in so far as they have continued to invite ministers to the church after January 29, 1958 in violation of the stipulation dated October 21, 1957, the judgment dated December 30, 1957, against the wishes of the plaintiff and its duly constituted official bodies, and in violation of law. (Underscoring ours)

9. From illegally preparing by-laws against the knowledge and consent of the plaintiff.

10. From illegally calling Board of Trustees meetings and Board of Deacons meetings in violation of the stipulation dated October 21, 1957 against the plaintiff's wishes and in violation of law, and restraining the defendants from electing Board of Trustees and Board of Deacons in violation of law, in violation of the stipulation of settlement dated October 21, 1957 and against the knowledge, permission and consent of the plaintiff.

11. That they be forever enjoined from interfering and interrupting the plaintiff in conducting divine worship, or other religious work in which it is engaged, and that the plaintiff have such other, further relief as may be just against the defendants besides the costs of this action.

Appendix "E"—Verified Complaint

AS TO THE SECOND CAUSE OF ACTION

WHEREFORE, plaintiff demands judgment against the defendants on the second cause of action in the sum of Two Hundred and Fifty Thousand ($250,000.00) Dollars for damages sustained by the plaintiff, together with the costs and disbursements of this action.

Dated: New York, February 15, 1958.

Yours, etc.,

SNITOW & SNITOW
Attorneys for the Plaintiff
Office & P. O. Address
152 West 42nd Street
New York, N. Y.

STATE OF NEW YORK
CITY OF NEW YORK } ss.:
COUNTY OF NEW YORK

INDIA WILSON, being duly sworn, deposes and says that she is a member of the Board of Trustees in the within action; that she has read the foregoing verified complaint and knows the contents thereof; that the same is true to her own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters she believes it to be true.

/s/ INDIA WILSON

Sworn to before me this
15th day of February, 1958

JULIUS ROSEMAN
Commission of Deeds, City of New York
New York County Clerk's No. 51
Commission Expires Sept. 24, 1959